IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 25TH JULY 2007 / 3RD SRAVANA 1929

Crl.MC.No. 2383 of 2007()

C.C.1069/02 (LP.232/2004 of JUDL.MAGISTRATE OF FIRST CLASS-I, ALUVA

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PETITIONER: ACCUSED 2 & 3

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1. KABEER, AGED 27, S/O ABDU RAHIMAN,
   VELANKUDIYIL, CHALAKKAL KARA,
   ALUVA EAST VILLAGE.

2. NIZAM, AGED 30, S/O ABDU RAHIMAN,
   VELANKUDIYIL, CHALAKKAL KARA,
   ALUVA EAST VILLAGE.

BY ADV. SRI.VIJU ABRAHAM
SRI.JOY C. PAUL
SRI.DOMINIC JOHNSON
SRI.ALBERT V.JOHN

RESPONDENTS:

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1. P.M.SAMEEDA, AGED 35,
   D/O MUHAMED, PUTHIYEDATH HOUSE,
   MOOLEPADOM, V.A.PADY,
   EDAPALLY.

2. STATE OF KERALA, REPRESENTED BY THE
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

R1 BY ADV. SRI.T.M.SATHAR
R2 BY PUBLIC PROSECUTOR SRI. M.S. BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 25/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 2383 of 2007

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Dated this the 25th day of July, 2007

O R D E R

The petitioners are accused Nos. 2 and 3 in a prosecution under Section 498A I.P.C. The first accused, their brother and the husband of the defacto complainant/first respondent herein, has since expired. The petitioners along with the first respondent have now come before this Court with the prayer that the prosecution surviving against the petitioners, which is now transferred to the list of long pending cases, may be quashed. The husband is no more. The first respondent has now settled the disputes with the petitioners. The first respondent has compounded the offences allegedly committed by the petitioners. In these circumstances the settlement and composition may be accepted and the proceedings against the petitioners may be quashed, it is prayed.

2. The counsel for the first respondent had appeared before court. He has ensured that the first respondent has filed an affidavit, in which she confirms such settlement/composition.

3. I am, in these circumstances, satisfied that the disputes have been settled between the parties. I am further satisfied that if

legally permissible the composition can be accepted and proceedings can be brought to premature termination.

4. The offence under Section 498A I.P.C. is not legally compoundable and the composition cannot be accepted under Section 320 Cr.P.C. But the learned counsel for the petitioners relies on the decision in **B.S. Joshi** v. **State of Haryana** (AIR 2003 SC 1386). The said decision is authority for the proposition that at times the interests of justice may transcend the interests of mere law and in such circumstances the provisions of Section 320 Cr.P.C. cannot be reckoned as a fetter on the sweeping powers of the Court under Section 482 Cr.P.C. to act in aid of justice. I am satisfied that this is an eminently fit case where the powers under Section 482 Cr.P.C. with the help of the dictum in **B.S. Joshi** can be invoked and the proceedings against the petitioners brought to premature termination.

5. This Crl.M.C. is hence allowed. C.C. No. 1069 of 2002 now pending as L.P. No.232 of 2004 before the Judicial First Class Magistrate-I, Alwaye against all the petitioners is hereby quashed. Proceedings under Section 446 Cr.P.C. if any pending against the accused and sureties shall of course continue.

(R. BASANT)
Judge

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